

APPEAL NO. 022969
FILED JANUARY 10, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 30, 2002. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the second compensable quarter. The appellant (carrier) contends that this decision is against the great weight and preponderance of the evidence. The appeal file contains no response from the claimant.

DECISION

Affirmed in part, reversed and rendered in part.

Pursuant to Section 408.142, an employee is entitled to SIBs if, on the expiration of the impairment income benefits (IIBs) period, the employee: has an impairment rating of 15% or more; has not returned to work or has returned to work earning less than 80% of the employee's average weekly wage as a direct result of the employee's impairment; has not elected to commute a portion of the IIBs; and has attempted in good faith to obtain employment commensurate with the employee's ability to work. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § Rule 130.102(d)(5) provides, in pertinent part, that an injured employee has made the required good faith effort if the employee "has provided sufficient documentation as described in subsection (e) of this section to show that he or she has made a good faith effort to obtain employment." Subsection (e) further provides that the injured worker "who is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts."

The evidence reflects that the during the 13-week qualifying period corresponding to the second compensable quarter, the claimant documented at least one job search during each of the weeks with the exception of the eighth week. The hearing officer explained in the Statement of the Evidence that although the claimant failed to document a job search effort each week of the qualifying period, the claimant credibly testified that he looked for work during each of the 13 weeks, but that he simply failed to document his search effort corresponding to the week of June 15, through June 21, 2002. The hearing officer determined that the claimant satisfied the good faith requirement for SIBs entitlement.

In Texas Workers' Compensation Commission Appeal No. 992321, decided November 22, 1999, we held that the documentation requirement of Rule 130.102(e) is mandatory and that a hearing officer could not consider nondocumented job search efforts in arriving at the good faith determination. See *also* Texas Workers' Compensation Commission Appeal No. 992247, decided November 23, 1999. Appeal No. 992247 also specifically pointed out that the documentation requirement cannot be

satisfied through testimony. Consistent with existing precedent as discussed above, such documentation was mandatory and the claimant's testimony alone could not establish a documented job search during the eighth week of the qualifying period. Finding error as a matter of law in the hearing officer's finding of the required good faith job search, we reverse Finding of Fact Nos. 9 and 10 and Conclusion of Law No. 3 and render a decision that the claimant did not make the required good faith job search and is not entitled to second quarter SIBs.

The carrier additionally appeals the hearing officer's findings that, during the qualifying period in question, the claimant's unemployment was a direct result of the compensable injury and that he cooperated with the Texas Workforce Commission and the Texas Rehabilitation Commission. Nothing in our review of the record indicates that these findings are so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). While we affirm the direct result finding, our decision set forth above is that the claimant is not entitled to SIBs.

The true corporate name of the insurance carrier is **ST. PAUL FIRE & MARINE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, COMMODORE 1, SUITE 750
AUSTIN, TEXAS 78701.**

Chris Cowan
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Robert W. Potts
Appeals Judge